

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . Criminal No. 1:08cr179-1
. .
vs. . Alexandria, Virginia
. May 13, 2008
TAI SHEN KUO, a/k/a Tai Kuo, . 10:00 a.m.
a/k/a Kuo Tai Shen, .
. .
Defendant. .
. .
.

TRANSCRIPT OF PRE-INDICTMENT PLEA
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: W. NEIL HAMMERSTROM, JR., AUSA
AARON M. ZEBLEY, AUSA
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Alexandria, VA 22314

FOR THE DEFENDANT: PLATO CACHERIS, ESQ.
JOHN F. HUNDLEY, ESQ.
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Alexandria, VA 22314
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

P R O C E S S I N G

2 (Defendant present.)

3 THE CLERK: Criminal Case 08-179, United States of
4 America v. Tai Shen Kuo. Would counsel please note their
5 appearances for the record.

6 MR. ZEBLEY: Good morning, Your Honor. Aaron Zebley
7 and Neil Hammerstrom on behalf of the United States.

8 THE COURT: Good morning.

9 MR. HUNDLEY: Good morning, Your Honor. John Hundley
10 and Plato Cacheris on behalf of Mr. Kuo.

11 THE COURT: Good morning. This matter comes on for a
12 pre-indictment plea, correct, Mr. Hundley?

13 MR. HUNDLEY: Correct.

14 THE COURT: All right. And Mr. Kuo does not need an
15 interpreter?

16 MR. HUNDLEY: He does not.

17 THE DEFENDANT: No, sir.

18 THE COURT: All right, Mr. Kuo, come up to the
19 lectern. The clerk will administer an affirmation to you at
20 this time.

21 TAI SHEN KUO, DEFENDANT, AFFIRMED

22 THE COURT: All right, Mr. Kuo, you have now taken a
23 promise to tell the truth in answering all of the Court's
24 questions. If you should lie in answering any question this
25 morning, the government could prosecute you for a new and

1 separate crime called perjury.

2 Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: For the record, what is your full name?

5 THE DEFENDANT: Tai Shen Kuo.

6 THE COURT: Are you also known as Tai Kuo and Kuo Tai
7 Shen?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And, Mr. Kuo, how old are you?

10 THE DEFENDANT: Fifty-eight, Your Honor.

11 THE COURT: How much education have you completed?

12 THE DEFENDANT: I'm a college graduate.

13 THE COURT: Do you have any problem reading, writing,
14 understanding, or speaking English?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Are you a United States citizen?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Are you presently on probation or parole
19 from any other criminal case?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Are you at this time under the care of a
22 doctor for any physical or mental problems?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Are you at this time taking any
25 medication for any physical or mental problem?

1 THE DEFENDANT: For high blood pressure, Your Honor.

2 THE COURT: High blood pressure?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. Have you had your medicine
5 today?

6 THE DEFENDANT: No.

7 THE COURT: When do you normally take the medicine?

8 THE DEFENDANT: About eleven, twelve o'clock.

9 THE COURT: So in about two hours?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Are you in any respect
12 feeling ill today in any respect?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Are you at this time under the influence
15 of any alcohol or drugs?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Mr. Kuo, we have several documents that
18 we need to go over in connection with your plea today. The
19 first document is called a waiver of indictment, and I see what
20 appears to be your signature and that of both of your
21 attorneys, Mr. Cacheris and Mr. Hundley. Did you, in fact,
22 sign the waiver of indictment?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Now, before you signed the waiver, did
25 your lawyers explain to you that under the laws and

1 Constitution of the United States, you have an absolute right
2 to require that the federal prosecutors go before a group of
3 people called a federal grand jury with the evidence they've
4 developed concerning your involvement in a conspiracy to
5 deliver national defense information to a foreign government?
6 Do you understand you have that right?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Now, a federal grand jury is made up of
9 anywhere from 16 to 23 ordinary citizens who are brought
10 together on a random basis, and the job of a grand jury is to
11 actually be a kind of reviewing system of potential criminal
12 cases, because what happens in the grand jury, which is a
13 completely secret proceeding, is a federal prosecutor goes into
14 the grand jury room, advises the grand jurors that the
15 prosecutor believes a person may have violated certain federal
16 criminal laws, and then presents evidence to the grand jury
17 supporting that position.

18 If at the end of the presentation, which can take a
19 few hours or a few days or even months sometimes, at least 12
20 members of the grand jury are satisfied that the evidence
21 establishes probable cause to believe that the crime or crimes
22 have been committed by the person, the grand jury will then
23 issue a document called an indictment, and that document is
24 normally how they -- how we start a felony-level prosecution in
25 federal court.

1 Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: The grand jury is considered a protector
4 of individual rights because it exists to make sure that a
5 person is not publicly charged with criminal activity without
6 there being a genuine factual basis to support the charge. Do
7 you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Now, a person can give up his right to
10 that review process, and that would be done by signing a
11 document such as the one in court today, a waiver of
12 indictment. The word "waiver" in the law means to give
13 something up, so by giving up indictment, that means that you
14 are allowing the prosecutors to come to court today and file
15 this conspiracy charge against you in court this morning
16 without having tested that charge before the grand jury.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And did you understand all of what I've
20 just explained to you before you signed the waiver?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Now, other than the written
23 plea agreement that's in court today, has anyone promised or
24 suggested to you that by waiving indictment, you might get a
25 lighter or shorter sentence or more favorable treatment by the

1 Court?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Has anyone put any force or pressure on
4 you to waive indictment today?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: All right. Mr. Hundley, did you and
7 Mr. Cacheris carefully go over this waiver with your client?

8 MR. HUNDLEY: We did, Your Honor.

9 THE COURT: And are you satisfied that Mr. Kuo has
10 entered his waiver in a knowing and voluntary fashion?

11 MR. HUNDLEY: I am.

12 THE COURT: All right, based upon all these answers
13 to the Court's questions, Mr. Kuo, I'm satisfied that you've
14 entered your waiver in a knowing and voluntary fashion and that
15 you've had the full advice of counsel, so the waiver is
16 accepted, and having accepted the waiver, that allows the
17 United States to file the following charge against you by way
18 of a criminal information, and in this information, it is
19 alleged that beginning in March of 2007 and continuing through
20 on or about February 11, 2008, in Alexandria, Virginia, and
21 elsewhere, that you unlawfully, knowingly, and willfully
22 conspired, confederated, and agreed with others, both known and
23 unknown, to communicate, deliver, and transmit directly and
24 indirectly to a foreign government, that is, the People's
25 Republic of China, and an agent thereof, documents and

1 information relating to the national defense of the United
2 States, with the intent or reason to believe that said
3 documents and information were to be used to the injury of the
4 United States or to the advantage of a foreign nation.

5 And then it's further alleged that as an overt act in
6 furtherance of that conspiracy, that on or about September 10,
7 2007, in Alexandria, Virginia, you met with an official of the
8 United States Department of Defense and obtained from him a
9 document containing classified national defense information
10 relating to communications between the United States military
11 and certain foreign nations, and that after that meeting, you
12 retyped the information into a laptop computer in an encrypted
13 format, and then you sent that document to a government
14 official of the People's Republic of China.

15 That's the conspiracy charge that's been filed
16 against you. Do you understand the charge?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And to that charge, how do you want to
19 plead, guilty or not guilty?

20 THE DEFENDANT: Guilty, Your Honor.

21 THE COURT: All right. Now, Mr. Kuo, before the
22 Court accepts your guilty plea, I'm going to review with you
23 the written plea agreement you've reached with the United
24 States as well as the facts of the case. At any point this
25 morning while I'm asking you these questions if you should

1 change your mind and decide you don't want to plead guilty, you
2 may withdraw your guilty plea.

3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: The plea agreement that was filed in
6 court a few minutes ago is 14 pages long, and again, I see on
7 the 14th page what appears to be your signature with today's
8 date, which is May 13, 2008. Did you, in fact, sign the plea
9 agreement today?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Now, before signing the plea agreement,
12 did you read it over for yourself word for word?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And have you thoroughly discussed the
15 plea agreement with your lawyers?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Have you asked them all the questions
18 that you have about the agreement?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Have they answered your questions to your
21 satisfaction?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: As you stand in court this morning, do
24 you have any questions whatsoever you want to ask me about the
25 plea agreement?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: And about how long ago did you first see
3 a copy of this plea agreement or a draft of the plea agreement?

4 THE DEFENDANT: The draft about a week-two weeks ago.

5 THE COURT: And were changes made to the draft?

6 THE DEFENDANT: A little, yes. Yes, Your Honor.

7 THE COURT: All right. And you've reviewed all of
8 the changes?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right, I want you to look at page 14.
11 I assume you have the agreement there in front of you, and I
12 want you to look, right above your signature are two sentences
13 I want you to appreciate are actually part of this plea
14 agreement. They do repeat much of what I just went over, but I
15 want you to see that it's written in the agreement. Those
16 sentences go, "I have read this plea agreement and carefully
17 reviewed every part of it with my attorney. I understand this
18 agreement and voluntarily agree to it."

19 Do you see those two sentences?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And are they completely true?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Mr. Kuo, by telling the Court that you've
24 read the entire plea agreement and discussed it thoroughly with
25 counsel and that you understand it and are voluntarily agreeing

1 to it, that means you will be bound or held responsible for
2 everything within this 14-page document even if I don't go over
3 every paragraph or page of the plea agreement with you in court
4 today. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And the reason for that result is that
7 the plea agreement is really a written contract between you and
8 the United States government, and when a person signs a written
9 contract after he's had a chance to review it carefully and to
10 go over it with his lawyers and he understands it when he signs
11 it and signs it voluntarily, then that whole document becomes a
12 binding legal document, and you can't just come back to court
13 in a couple of weeks and say, well, I changed my mind. I don't
14 like what's on page 3. I want to change it.

15 It's too late. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Other than the 14-page plea agreement
18 that we're talking about right now, do you have any side deals
19 or side understandings with anybody from the federal
20 government, whether the Department of Defense, the Federal
21 Bureau of Investigation, the U.S. Attorney's Office, or anybody
22 else?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Mr. Hundley, is that correct?

25 MR. HUNDLEY: That's correct, Your Honor.

1 THE COURT: All right, let's turn then to page 1,
2 paragraph 1, where it says as part of the plea agreement, you
3 have agreed to waive indictment, which you have just done, and
4 enter a guilty plea to the criminal information I just
5 summarized for you.

6 Now, do you understand, Mr. Kuo, that the crime of
7 conspiracy to deliver national defense information to a foreign
8 government is a felony offense that carries a possible maximum
9 penalty of life imprisonment, a possible maximum fine of
10 \$250,000, there's an automatic special assessment of \$100, and
11 at least five -- I'm sorry, and up to five years of supervised
12 release? Do you understand those penalty provisions?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Now, supervised release does not begin
15 until the prison portion of the sentence has been served. When
16 a person is on supervised release, he is under the control of a
17 federal probation officer, and there may be requirements to do
18 certain things as well as requirements not to do certain
19 things.

20 And the key fact you need to understand is that if
21 you violate any condition of supervised release, the punishment
22 could be being sent back to prison for as long as that period,
23 which could be five years. Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand that parole is not

1 available in the federal system? That means whatever term of
2 imprisonment is imposed must be fully served. Do you
3 understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: When it comes time for sentencing, the
6 Court is going to need to look at several different factors.
7 We first have to look at the Federal Sentencing Guidelines.
8 The guidelines are determined based on two factual decisions.
9 First, the Court has to determine your criminal history.

10 There are six categories of criminal history, each
11 getting a number. A No. I criminal history would go to
12 somebody who's never been in trouble with the law or who has a
13 very minor criminal record, and then depending upon the
14 criminal history, convictions, probation or parole violations,
15 those types of things, the history score can go up to a level
16 VI, which is the highest and most serious level.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Then the Court looks at the offense
20 conduct. Every federal crime has a basic number assigned to
21 it, and then depending upon the facts, that number can be
22 raised or lowered. Those are called sentencing enhancements.

23 Factors that could increase the score could be such
24 things as the number of classified documents that were involved
25 in the case. Obviously, the more documents, the higher the

1 score is going to be. Whether there was an abuse of a position
2 of trust, the degree to which national security may have been
3 injured, if you were receiving any monetary reward, those are
4 the types of factors that may increase the score.

5 At the same time, factors that can decrease the score
6 include such things as full acceptance of responsibility. If
7 that happens, a defendant can get two and in some cases three
8 points reduced from the offense level.

9 But in the end, we have the two numbers, the criminal
10 history number and the offense level number, and they're put on
11 a one-page chart called the Sentencing Guideline Table, and
12 that establishes an advisory guideline range. Now, the Court
13 is expected to look at that range but is not required to
14 sentence within it if the Court finds good reasons under
15 section 3553 of Title 18 to sentence otherwise.

16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Now, paragraph 5 of your plea agreement
19 explains somewhat what I've just gone over with you. The one
20 thing that I want to make sure you understand is the government
21 has indicated in paragraph 5 that if you clearly accept full
22 responsibility for the offense, the government will agree to
23 recommend that at the time of sentencing, you be awarded a
24 three-level reduction to the offense level for acceptance of
25 responsibility, but the government has made no other promises

1 or representations about the sentence.

2 Is that your understanding of the plea agreement?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Now, I'm going to assume that
5 Mr. Hundley and Mr. Cacheris first of all have discussed
6 guideline sentencing with you. Have they done that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did they show you the one-page chart I
9 was talking about with all the numbers on it, the Sentencing
10 Table?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. And therefore, I assume
13 they've given you some estimates as to what they think your
14 sentence may be under the guidelines. Have they done that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: I want to make sure you understand that
17 no matter what Mr. Hundley and Mr. Cacheris may have told you
18 they think your scores may come out to be for guideline
19 purposes or what type of an ultimate sentence they think you
20 may get because of the factors under 3553, and for that matter,
21 if the prosecutors or any of the government agents or anybody
22 at the Department of Defense have given you some estimates as
23 to what kind of punishment they think you will get, I want to
24 make sure you understand none of those discussions in any
25 respect bind or limit the probation officer who prepares the

1 pre-sentence report or this Court when it goes to sentence you.

2 Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And so if at the sentencing hearing the
5 Court uses guideline scores that are different from what you're
6 expecting or hoping for or imposes a sentence on you that is
7 different from what you are expecting or hoping for, that will
8 not give you a basis to withdraw your guilty plea. Do you
9 understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Normally, a defendant in a criminal case
12 has an automatic right to appeal the sentence imposed on him.
13 All he has to do is file literally a two-sentence notice of
14 appeal with the Clerk of Court just saying, "I want to appeal
15 my sentence," that's actually one sentence, and he will get an
16 appeal, but under paragraph 6 of your plea agreement, and this
17 is on page 3, the second sentence that begins with the
18 word "nonetheless," as part of this plea agreement, you are
19 knowingly waiving -- again, that means giving up -- your right
20 to appeal both your conviction for this conspiracy as well as
21 any sentence as long as the sentence is not greater than the
22 statutory maximum.

23 That means as long as the sentence imposed is not
24 greater than life imprisonment followed by five years of
25 supervised release and the fine is not greater than \$250,000

1 and the special assessment is not greater than \$100, you cannot
2 appeal that sentence for any reason.

3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: In exchange for your guilty plea to the
6 criminal information, the United States in paragraph 10 of the
7 plea agreement -- this is on page 5 -- has agreed it will not
8 further prosecute you for the specific activity described in
9 the information and statement of facts. Now, paragraph 10 does
10 not protect you from being prosecuted first of all in any other
11 district, so if you were involved in the District of
12 Columbia -- I'm sorry, is there something further?

13 MR. HAMMERSTROM: Yes, Your Honor.

14 MR. ZEBLEY: We actually ended up modifying slightly
15 paragraph 10 from the copy that was sent up to chambers
16 yesterday. The immunity actually now covers the entire United
17 States. We eliminated the limitation to EDVA.

18 THE COURT: Sorry, it says the United States will
19 not.

20 MR. ZEBLEY: Yes, Your Honor.

21 THE COURT: All right, I'm sorry. So anyplace in the
22 country, the federal authorities will not prosecute you for the
23 specific conduct described in the information or statement of
24 facts, but, for example, if you were involved in getting
25 national security information and sending it to some other

1 country or if you were involved in any other type of criminal
2 activity, tax evasion or something like that, you don't have
3 immunity from prosecution for those offenses.

4 Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. You've agreed in paragraph 11
7 to cooperate with the United States. That cooperation is
8 described in more detail in subsections (a) through (g) but
9 includes among other things your testifying truthfully and
10 completely at any grand juries, trials, or other proceedings;
11 your being reasonably available for debriefings and pretrial
12 conferences with government agents and prosecutors; and your
13 providing documents or other materials to the government for
14 its use in any further investigations.

15 Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: In paragraph 12, the government has
18 agreed it will not use against you to either increase your
19 sentence or to bring a new prosecution any completely truthful
20 information you provide under paragraph 11. Do you understand
21 that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Now, most defendants who cooperate with
24 the government do so with the hope that the cooperation will
25 result in some lessening of the punishment. That issue is

1 addressed in paragraph 14 of the plea agreement.

2 There are two ways in which cooperation can result in
3 some reduction to the punishment. The first would be if the
4 government filed a motion at the sentencing hearing under 5K1.1
5 of the guidelines asking the Court to sentence below the
6 guideline range because the defendant has provided substantial
7 assistance. The other way in which a sentence can be affected
8 by cooperation is after the sentence has been imposed, so the
9 person is now usually in custody, serving the sentence, if the
10 government files a Rule 35(b) motion, which would ask the Court
11 to reduce an already imposed sentence again because of
12 cooperation.

13 What paragraph 14 makes clear is that the United
14 States has not promised that they will file either of those
15 motions even if you've cooperated with the government. Do you
16 understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And so that means that even if you've sat
19 down with the agents and given them information, even if you've
20 testified in the grand jury, if the United States does not feel
21 that you've told everything or doesn't think it helped them in
22 any respect and they fail to file one of these motions, that is
23 not a violation of the plea agreement, and it will not give you
24 a basis to withdraw your guilty plea.

25 Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Moreover, the Court is not bound by
3 anything in paragraph 14, so even if, for example, the United
4 States filed a motion under Rule 35(b) to reduce your sentence,
5 and let's say they asked the Court to reduce your sentence by
6 50 percent and I felt given all the facts that only a 25
7 percent reduction was proper, if that were the Court's
8 decision, that would not violate the plea agreement, and it
9 would not give you a basis to withdraw your guilty plea.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: As part of this plea agreement, you have
13 also agreed in paragraph 15 that you have agreed to forfeit up
14 to \$40,000 in United States currency. Do you understand that's
15 part of the agreement?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You have also agreed under paragraph 17
18 to several very specific nondisclosure elements of this
19 agreement. These include among other things your agreeing
20 never to divulge, publish, or reveal in any respect any
21 classified information; you've agreed that if you should at any
22 point participate as either an author or a contributor to the
23 creation of any book, writing, article, film, etc., that you
24 will be required to get pre-publication approval from the DOD;
25 and you obviously in the other portions of (c) and (d) have

1 also agreed to other restrictions, all requiring that you have
2 proper clearance from DOD.

3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And in paragraph 18, you've agreed to
6 assign any profits or proceeds from publicity. Do you
7 understand that as well?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You'd be assigning those profits or
10 proceeds to the United States government. Do you understand
11 that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: In paragraph 19, you've agreed that you
14 will have no contact with any foreign government or agents
15 thereof except with the express permission of the Department of
16 Defense, and you shall not seek or accept personally or through
17 another person or entity any benefit from such foreign
18 government or agent thereof.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: It does indicate further in that
22 paragraph that you may have contact with a foreign government
23 or agents thereof for the purpose of conducting a lawful
24 business transaction related to a bona fide and legitimate
25 business, provided that you have given such notice to the DOD

1 in advance and that you get permission from the DOD if certain
2 types of contacts are part of that.

3 Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Have you had enough time to
6 explain everything you know about this case to Mr. Hundley and
7 Mr. Cacheris?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Have your lawyers explained to you the
10 nature of this conspiracy charge and any ways in which you
11 could possibly defend yourself against the charge?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Are you fully satisfied with the way in
14 which your lawyers have worked for you in this case?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And do you understand, Mr. Kuo, that you
17 still at this time have a right to plead not guilty and to go
18 to trial on the charge?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And if you did go to trial, then the
21 government would have the burden of proving you guilty. In
22 order for you to be found guilty at trial, the government must
23 prove your guilt beyond a reasonable doubt. Do you understand
24 that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And to do that specifically, they have to
2 prove each and every one of the essential elements of the
3 offense beyond a reasonable doubt. So they first of all have
4 to prove that between March of 2007 and February 11 of 2008,
5 you were part of an agreement, because a conspiracy is
6 basically an agreement between two or more people to do
7 something the law forbids.

8 So they have to prove that during that time period,
9 you and at least one other person came to an agreement, and the
10 agreement was to communicate, deliver, or transmit to a foreign
11 government, in this case the People's Republic of China,
12 documents and information relating to the national defense,
13 with the intent of either injuring the United States or
14 allowing the foreign nation to have an advantage.

15 So that's what they have to prove, that you knowingly
16 and intentionally were part of that agreement. Do you
17 understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And they have to prove knowing and
20 intentional activity. That means not -- that you acted not by
21 an accident or mistake or other innocent reason. Do you
22 understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And they have to show that at least one
25 act in furtherance of the conspiracy occurred in Alexandria,

1 Virginia, or within the Eastern District of Virginia. Do you
2 understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And lastly, they have to prove beyond a
5 reasonable doubt that the specific overt act, that is, the
6 incident on September 10, 2007, in Alexandria, where you met
7 with a DOD official, obtained a classified document from the
8 official, and then transmitted it to the People's Republic of
9 China or an agent thereof, they'd have to prove that that
10 happened beyond a reasonable doubt.

11 Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Now, if you pled not guilty and went to
14 trial, there are certain protections a person has at trial that
15 are essentially given up with a guilty plea. First, you could
16 see the government's witnesses and evidence and test that
17 information through the questions of your lawyer.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You could ask the Court to issue
21 subpoenas that would require that either witnesses or physical
22 evidence be brought to the courthouse so you could use that
23 information in your defense at trial. Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And you could testify as a witness at

1 trial. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: However, you could also invoke your Fifth
4 Amendment right against self-incrimination, and you could
5 refuse to testify, and if you made that decision, that decision
6 could not be used as any evidence of guilt. Do you understand
7 that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You would have the right to the help of a
10 lawyer throughout all stages of your trial, and if you could
11 not afford to hire a lawyer at your own expense, we would
12 appoint counsel for you at taxpayers' expense. Do you
13 understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Your trial could be conducted in either
16 of two ways. First, you could have a trial by a jury. In that
17 case, 12 ordinary citizens would be randomly brought together
18 to hear your case. Or you could waive your jury trial rights
19 and have a trial by a judge sitting alone, but in either type
20 of case, whether tried to a jury or tried to a judge, you could
21 not be convicted unless the government proved your guilt beyond
22 a reasonable doubt.

23 Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: If you continued with a not guilty plea,

1 your lawyers could try to attack the prosecution's case, and
2 there are many different ways in which that can be done. For
3 example, if there were any searches conducted of your
4 residence, your computer, or your home, your office, whatever,
5 there may or may not be defects in the way in which the
6 searches were conducted, and it's possible that evidence might
7 be suppressible. If you gave a confession, there may be issues
8 about the way in which the confession was taken.

9 There may be issues about the documents involved in
10 the case, whether they truly were classified, whether they
11 truly -- whether you acted with the intent to injure the United
12 States or whether you acted with the intent to give a foreign
13 nation an advantage. I mean, there are all sorts of different
14 issues that could possibly be raised in your defense.

15 What you need to understand is that by pleading
16 guilty, you're giving up your right to raise those issues. Do
17 you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And lastly, if you pled not guilty and
20 you went to trial and you were found guilty at trial, you could
21 appeal that finding of guilt to a higher-level court. Again,
22 under the terms of this plea agreement as well as the way the
23 law is structured, if you are found guilty based on a guilty
24 plea, you give up your right to appeal the conviction.

25 Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Other than the written plea agreement
3 that's in court today, has anybody promised or suggested to you
4 that by pleading guilty, you would get a lighter sentence or
5 more favorable treatment by the Court?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Has anyone put any force or pressure on
8 you to plead guilty today?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: All right, Mr. Kuo, the last document we
11 need to review in connection with your plea is the written
12 statement of facts that was just handed up in court. It's a
13 14-page document, and I see on the last page again what appears
14 to be your signature.

15 Do you remember signing the statement of facts?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Do you understand that by
18 signing that statement, you're admitting that everything in the
19 preceding 36 numbered paragraphs could have been proven beyond
20 a reasonable doubt if the case went to trial?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: So as I understand it, you do agree that
23 you were part of this conspiracy; is that correct?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: All right. And that during the time

1 period of March 2007 to February 11, 2008, you were living in
2 New Orleans, is that correct?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And you regularly traveled to the
5 People's Republic of China, specifically, Beijing?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. You had an office in Beijing?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And how long have you had that office?

10 THE DEFENDANT: About nine years, Your Honor.

11 THE COURT: Nine years? And what was the primary
12 business that you were in?

13 THE DEFENDANT: Import furniture from China to the
14 United States.

15 THE COURT: All right. And it indicates in paragraph
16 2 here that you had taken steps to establish two companies in
17 an effort to obtain subcontracts related to the United States'
18 sale of defense technology to Taiwan. Is that correct?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: So besides furniture, you were also
21 involved with defense technology?

22 THE DEFENDANT: We never get a contract yet.

23 THE COURT: But you were trying to?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And it indicates in paragraph 3 that you
3 maintained a close relationship with a foreign official of the
4 People's Republic of China.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Is that correct?

7 And did you know that this person was an official of
8 the Chinese government?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And did you provide him with sensitive
11 United States government information that you acquired from
12 Gregg Bergersen?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Now, how did you first meet Bergersen?

15 THE DEFENDANT: In Taiwan.

16 THE COURT: And how did you meet him in Taiwan?

17 THE DEFENDANT: He was introduced by one of the
18 Taiwanese officials.

19 THE COURT: And what did you understand
20 Mr. Bergersen's job to be?

21 THE DEFENDANT: Yes. At that time, he's a Navy IPO
22 C4ISR official.

23 THE COURT: All right. And did you learn that he had
24 access to classified information from the Department of
25 Defense?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. And how did you, how did you
3 communicate with the agent from the People's Republic of China?

4 THE DEFENDANT: Through telephone, e-mail, or
5 personal contact when I traveled to China.

6 THE COURT: And did that individual give you
7 directions as to what kind of information you were to collect?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And did he actually give you specific
10 descriptions of documents that he wanted you to try to find?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you agree that you were paid a
13 total of \$50,000 for your services?

14 THE DEFENDANT: Yes, Your Honor. Yes, Your Honor.

15 THE COURT: Now, it says, unless I'm misreading
16 something, that between 2001 and February 11 of 2008, the PR
17 official paid you a total of \$50,000 for your services. The
18 conspiracy we're talking about here is alleged to have started
19 in March of 2007. Someone needs to explain the discrepancy to
20 me.

21 MR. ZEBLEY: The allegation in the criminal
22 information we limited to when national defense information
23 became part of the, the conspiracy. The period of time for
24 which Mr. Kuo was receiving payments going back to 2001
25 predates when national defense information became part of this,

1 but he was still gathering information and passing it on to the
2 official beginning in 2001.

3 THE COURT: So what kind of information were you
4 providing in 2001 and 2002?

5 THE DEFENDANT: Usually nonclassified. Like, for
6 instance, the report of DOD to Congress on the status of the
7 People's Republic of China Army, but it's nonclassified stuff.
8 It's public.

9 THE COURT: So it could have been obtained by reading
10 the Congressional Record or something like that?

11 THE DEFENDANT: Yes, ma'am. Yes, Your Honor, yes.

12 THE COURT: And the request for the classified
13 information didn't begin until March of 2007?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. And were you paying Bergersen
16 for his information?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And how were you paying him?

19 THE DEFENDANT: Cash, Your Honor.

20 THE COURT: And did he ask for the cash?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: You offered it to him?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Um-hum. And did you understand that it
25 was against the law to do what you were doing?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Now, it indicates that -- do
3 you agree that you would meet Bergersen sometimes in Las Vegas?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. And also in Charleston, South
6 Carolina?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Is there anything whatsoever in this
9 detailed statement of facts that you disagree with?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you understand that if the Court
12 accepts the statement of facts and accepts your guilty plea,
13 you'll be found guilty today, there'll be no further trial, and
14 this will end the case in terms of the finding of guilt? Do
15 you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you claim in any respect that you are
18 innocent of the charge in this conspiracy?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: How then do you plead, guilty or not
21 guilty?

22 THE DEFENDANT: Guilty, Your Honor.

23 THE COURT: All right. Mr. Hundley, have you had
24 enough time to carefully go over this guilty plea and the facts
25 of the case with your client?

1 MR. HUNDLEY: We have, Your Honor.

2 THE COURT: Are you and Mr. Cacheris fully satisfied
3 that the defendant is entering this guilty plea in a knowing
4 and voluntary fashion?

5 MR. HUNDLEY: Yes, Your Honor.

6 THE COURT: And are you satisfied that the plea of
7 guilt fully accords with your understanding of the facts and
8 circumstances?

9 MR. HUNDLEY: It does, Your Honor.

10 THE COURT: All right, Mr. Kuo, based upon your
11 answers to the Court's questions, I'm satisfied that you've
12 entered your guilty plea today knowingly and voluntarily and
13 with the full advice of extremely competent counsel and that
14 the written statement of facts, all of which the Court accepts
15 as part of this record, establishes your guilt beyond a
16 reasonable doubt.

17 We need therefore, now having found you guilty, to
18 set this case for sentencing, and we're actually into the
19 August time frame at this point. How is Friday, August 8, for
20 everybody? Does that work?

21 MR. ZEBLEY: That's fine for the government, Your
22 Honor.

23 MR. HUNDLEY: That's fine, Your Honor.

24 THE COURT: All right, that will be at nine o'clock.

25 Mr. Kuo, you'll be visited in your cell by a federal

1 probation officer who will be conducting a background
2 investigation. Your full cooperation with that officer is to
3 your advantage. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Is there anything further on this case?

6 MR. ZEBLEY: Nothing, Your Honor.

7 THE COURT: No?

8 MR. HUNDLEY: Nothing, Your Honor.

9 THE COURT: Then the defendant is remanded, and we'll
10 recess court for the day. Thank you.

11 (Which were all the proceedings
12 had at this time.)

13

14 CERTIFICATE OF THE REPORTER

15 I certify that the foregoing is a correct transcript of
16 the record of proceedings in the above-entitled matter.

17

18

19

/s/
Anneliese J. Thomson

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